Sivakumar a/l Varatharaju Naidu v Ganesan a/l Retanam

HIGH COURT (IPOH) — CIVIL SUIT NO 22–118 OF 2009
AZAHAR MOHAMED J
14 SEPTEMBER 2009

Civil Procedure — Pleadings — Material facts to be pleaded — Plaintiff applied for injunction to prevent defendant or defendant's agents from assaulting him — Whether fact pleaded — Whether courts bound by pleadings — Whether omission in statement of claim can be made good by affidavit evidence — Whether plaintiff estopped from asserting defendant or defendant's agents assaulted him

Civil Procedure — Pleadings — Striking out — Whether plaintiff's prayer for injunctions plainly and obviously unsustainable — Suit commenced by plaintiff as Speaker of State Assembly — Whether plaintiff's capacity as Speaker existed at time of filing of action — Whether proceedings in Assembly justiciable — O 18 r 19 of the Rules of the High Court 1980

Constitutional Law — Legislature — State Assembly — Appointment and removal of State Assembly Speaker — Whether removal of plaintiff and appointment of defendant as Perak State Assembly Speaker valid — Article 36A of the Laws of the Constitution of Perak Darul Ridzuan — Whether Assembly has power or jurisdiction to elect or dismiss Speaker during its proceedings — Whether validity of appointment of Speaker within court's jurisdiction — Federal Constitution art 72(1)

Following the 12th General Elections, the political alliance of Pakatan Rakyat formed the Perak State Government and the plaintiff was elected by the Perak Legislative Assembly ('Assembly') as its Speaker. In February 2009, the political alliance of Barisan Nasional formed the new state government replacing the political alliance of Pakatan Rakyat. On 23 April 2009, the office of the Secretary to the Assembly received two motions for the removal of the plaintiff as Speaker and for appointment of the defendant as the Speaker. On 7 May 2009, the Assembly convened for the first time since the formation of the new state government and the plaintiff was forcibly ejected from his seat at the Assembly hall. Subsequent to the proceedings of the Assembly on 7 May 2009, the plaintiff filed the present action. The plaintiff asserted that the defendant's unknown servants and/or agents had attacked him. The plaintiff claimed, inter alia, damages and an injunction to prevent

the defendant and/or his agents or servants from denying the plaintiff entry to the Assembly and/or prohibiting the plaintiff in whatsoever way from occupying the office and carrying out his duties as the lawful Speaker. The defendant applied to strike out the action under O 18 r 19 of the Rules of the High Court 1980 on the grounds that the plaintiff's pleading was scandalous, frivolous and vexatious and that it was an abuse of the process of the court.

Held, dismissing the plaintiff's application and allowing the defendant's application with costs:

(1) The Assembly was properly convened on 7 May 2009 and that the sitting on that day was lawful. The removal of the plaintiff and the appointment of the defendant as the new Speaker were part of the proceeding of the Assembly on 7 May 2009. Pursuant to art 36A of the Laws of the Constitution of Perak Darul Ridzuan, the Assembly has the power or jurisdiction to elect and/or to dismiss the Speaker. Hence, the issue of who was the validly appointed Speaker was not within the court's jurisdiction. The validity of any proceeding in the Assembly is not justiciable. Article 72(1) of the Federal Constitution prevents the court from examining the matters that took place in the course of the proceedings of the Assembly on 7 May 2009 (see paras 18–21 & 23–24).

(2) The plaintiff's capacity as the Speaker of the Assembly no longer existed at the time of the filing of the present action. The non-justiciability of the validity of the proceeding of the Assembly on 7 May 2009 was fatal to the ability of the plaintiff to assert in his pleading that he was still the current lawful Speaker. Therefore, the plaintiff's action which was premised on the assertion that he was still the lawful Speaker was untenable. Hence, the plaintiff's prayer for injunctions was therefore plainly and obviously unsustainable (see para 26).

(3) The plaintiff had not pleaded that the defendant had assaulted him. The courts are bound by the pleadings in as much as the parties themselves. An omission or defect in a statement of claim cannot be made good by affidavit evidence. The submissions by the plaintiff's counsel and the content of the plaintiff's affidavit were to the effect that the defendant had also assaulted the plaintiff. As the pleadings stood, the plaintiff was estopped from asserting that he was assaulted by the defendant (see paras 30–31).

(4) The plaintiff had not pleaded any material facts to support the contention that the persons who assaulted him were indeed the

defendant's agents and/or servants. Hence, the claim for damages was totally unfounded and obviously unsustainable. It was a frivolous and vexatious claim (see paras 32–33).

[Bahasa Malaysia summary

Berikutan dengan Pilihan Raya Umum ke-12, pakatan parti politik Pakatan Rakyat membentuk kerajaan Negeri Perak dan plaintif dilantik oleh Dewan Undangan Negeri Perak ('DUN') sebagai Yang diPertua DUN tersebut. Pada Februari 2009, pakatan parti politik Barisan Nasional membentuk kerajaan negeri yang baru menggantikan pakatan parti politik Pakatan Rakyat. Pada 23 April 2009, pejabat Setiausaha DUN tersebut menerima dua usul penyingkiran plaintif sebagai Yang diPertua dan juga perlantikan defendan sebagai Yang diPertua. Pada 7 Mei 2009, DUN tersebut bersidang pertama kalinya sejak pembentukan kerajaaan negeri yang baru dan plaintif dihalau daripada kerusinya di dewan. Berikutan dengan persidangan DUN pada 7 Mei 2009, plaintif memfailkan tindakan ini. Plaintif menegaskan bahawa pengkhidmat-pengkhidmat dan/atau ejen-ejen defendan yang tidak dikenali telah menyerangnya. Plaintif mendakwa, antara lain, ganti rugi dan suatu injunksi menghalang defendan dan/atau ejen-ejen atau pengkhidmat-pengkhidmatnya daripada menghalang plaintif masuk ke DUN dan/atau menghalang plaintif dalam apa cara pun daripada menjawat dan menjalankan tugasannya sebagai Yang diPertua yang sah. Defendan memohon untuk mengetepikan tindakan tersebut di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 atas alasan-alasan bahawa pliding plaintif adalah bersifat skandal, remeh dan menyusahkan dan bahawa tindakan tersebut menyalahgunakan proses mahkamah.

Diputuskan, menolak permohonan plaintif dan membenarkan permohonan defendan dengan kos:

(1) DUN bersidang dengan betul pada 7 Mei 2009 dan persidangan pada hari itu adalah sah. Penyingkiran plaintif dan juga perlantikan defendan sebagai Yang diPertua yang baru merupakan sebahagian daripada prosiding DUN pada 7 Mei 2009 tersebut. Berikutan dengan perkara 36A Undang-Undang Tubuh Kerajaan Perak Darul Ridzuan, DUN tersebut mempunyai kuasa atau bidang kuasa untuk melantik dan/atau memecat Yang diPertua. Oleh itu, isu siapakah Yang diPertua yang sah bukanlah dalam bidang kuasa mahkamah. Kesahan sebarang prosiding di DUN tidak boleh diadili. Perkara 72(1) Perlembagaan Persekutuan menghalang mahkamah daripada menghakimi perkara-perkara yang berlaku semasa prosiding DUN pada 7 Mei 2009 tersebut (lihat perenggan 18–21 & 23–24).

(2) Kedudukan plaintif sebagai Yang diPertua DUN tersebut tidak lagi wujud pada masa pemfailan tindakan ini. Kesahan prosiding DUN pada 7 Mei 2009 tersebut yang tidak boleh diadili adalah penting kepada keupayaan plaintif untuk menegaskan dalam plidingnya bahawa dia masih lagi Yang diPertua yang sah. Oleh itu, tindakan plaintif yang berasaskan penegasan bahawa dia masih lagi merupakan Yang diPertua yang sah tidak boleh digunapakai. Maka, permohonan plaintif untuk injunksi-injunksi adalah jelas lagi terang tidak boleh dikekalkan (lihat perenggan 26).

(3) Plaintif tidak memplid bahawa defendan telah menyerangnya. Mahkamah terikat dengan pliding-pliding sepertimana pihak-pihak juga. Sebarang peninggalan atau kecacatan dalam penyata tuntutan tidak boleh diperbetulkan dengan keterangan afidavit. Hujahan oleh peguam plaintif dan isi kandungan afidavit plaintif menunjukkan bahawa defendan juga telah menyerang plaintif. Maka, menurut pliding, plaintif diestop daripada menegaskan bahawa dia diserang oleh defendan (lihat perenggan 30–31).

(4) Plaintif tidak memplid sebarang fakta-fakta material untuk menyokong hujah bahawa orang-orang yang menyerangnya adalah ejen-ejen dan/atau pengkhidmat-pengkhidmat defendan. Oleh itu, tuntutan untuk ganti rugi adalah tidak berasas sama sekali dan jelas tidak boleh diterima. Ini merupakan tuntutan yang remeh dan menyusahkan (lihat perenggan 32–33).]

Notes

For a case on state assembly, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 2249.

For cases on material facts to be pleaded, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 5463–5466.

For cases on striking out, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 5561–5653.

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Bradlaugh v Gossett (1884) 12 QBD 271, DC (folld)

Bruce v Odhams Press, Ltd [1936] 1 KB 697, CA (refd)

Dato' Dr Zambry bin Abd Kadir v Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin [2009] 5 MLJ 464; [2009] 4 AMR 569, CA (refd)

Fan Yew Teng v Government of Malaysia [1976] 2 MLJ 262, HC (folld)

Janagi v Ong Boon Kiat [1971] 2 MLJ 196; [1971] 1 LNS 42, HC (refd)

Lim Cho Hock v Speaker, Perak State Legislative Assembly [1979] 2 MLJ 85, HC (folld)

Metroplex Development Sdn Bhd v Mohd Mastana bin Makaddas & Anor [1995] 2 MLJ 276; [1995] 3 CLJ 70, HC (refd)

Siskina (Owners of Cargo Lately Laden on Board) & Ors, The v Distos Companies Naviera SA [1979] AC 210, HL (refd)

Tun Datu Haji Mustapha bin Datu Harun v Legislative Assembly of State of Sabah & Ors [1986] 2 MLJ 388, HC (folld)

United Malayan Banking Corp Bhd v Palm & Vegetable Oils Sdn Bhd & Ors [1983] 1 MLJ 206, FC (refd)

YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24, FC (refd)

Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152; [1990] 1 CLJ 1113, SC (refd)

Legislation referred to

Federal Constitution art 72, 72(1)
Laws of the Constitution of Perak Darul Ridzuan art 36A
Rules of the High Court 1980 O 14, O 18 rr 7, 19, 19(1)(b), (d)

Chan Kok Keong (Leong Cheok Keng and Mohd Asri Othman with him) (Chan & Associates) for the plaintiff.

Mohd Hafarizam Harun (Firoz Hussein, Badrul Hishah Abd Wahap, Cheng Mai, Abu Bakar As Sidek, Faizul Hilmy and Syed Faisal Syed with him) (Ong-Hanim & Badrul) for the defendant.

Azahar Mohamed J:

[1] Following the 12th General Elections held on 8 March 2008, the political alliance of Pakatan Rakyat won 31 seats in the 59 member Perak State Legislative Assembly (the Legislative Assembly) (see *Dato' Dr Zambry bin Abd Kadir v Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin* [2009] 4 AMR 569). The political alliance of Barisan National held the remaining 28 seats. As a result, the political alliance of Pakatan Rakyat formed the state government and Mr Sivakumar a/l Varatharaju Naidu (the plaintiff), the Tronoh state assemblyman, was subsequently elected by the Legislative Assembly as its Speaker.

[2] In February 2009, a very important event took place. It is not necessary for me to go into detail here about the event but suffice to say that the political alliance of Barisan National formed the new state government replacing the political alliance of Pakatan Rakyat.

[3] On 23 April 2009, the office of the secretary to the Legislative Assembly received two motions. The first was a motion to remove the plaintiff as

Speaker of the Legislative Assembly. The second motion was to appoint Mr Ganesan a/l Retanam (the defendant) as the Speaker of the Legislative Assembly.

[4] On 7 May 2009, the Legislative Assembly convened for the first time since the formation of the new state government. The proceedings of the Legislative Assembly on 7 May 2009 formed the subject matter of the present action, about which more will be said further on at a later stage of this judgment.

[5] Subsequent to the proceedings of the Legislative Assembly on 7 May 2009, the plaintiff had on 15 May 2009 filed a writ of summons and a statement of claim (encl 1) herein against the defendant. He also filed on the same date a summons in chambers (encl 3) seeking, inter alia, the following orders:

(a) the defendant and/or his agents or servants be prevented from denying the plaintiff entry to the assembly or from prohibiting or obstructing the plaintiff in any way whatsoever from occupying the office of or carrying out his duties as the lawful Speaker of the Perak State Assembly; and

(b) the defendant and/or his agents or servants be prohibited from carrying out any further acts of abuse, assault and/or battery on the plaintiff.

[6] Subsequently, the defendant took out a summons in chambers dated 30 June 2009 (encl 11) seeking an order, inter alia, to strike out the whole of the plaintiff's writ of summons and the statement of claim.

[7] In view of the defendant's striking out application, I will have to deal with and resolve the defendant's application in encl 11 in the first instance.

[8] At this juncture, it is important to take a closer look at the plaintiff's statement of claim. According to the plaintiff, he is at all material times, the Tronoh State assemblyman and he is still the Speaker of the Legislative Assembly. The defendant is, at all material times, not an elected member of the Legislative Assembly and therefore his presence at any Legislative Assembly sitting is unlawful and constitutes contempt of the Legislative Assembly. On 7 May 2009, at or about 2pm, the plaintiff was presiding over a sitting of the Legislative Assembly at the Bangunan Darul Ridzuan, Jalan Panglima Bukit Gantang, Ipoh and was lawfully occupying his seat in the assembly hall when the defendant's servants and/or agents assaulted the plaintiff by seizing him with violence, dragging him from his seat and forcibly ejecting him from the assembly. It was upon the specific instructions of the defendant that the defendant's servants and/or agents carried out the

unlawful act of evicting the plaintiff from his seat and the assembly in the presence of the defendant. During the plaintiff's forced absence from the assembly hall, the defendant unlawfully held himself out as the Speaker by occupying the Speaker's seat and donning the Speaker's attire. In the meantime, the plaintiff was wrongfully and without lawful justification kept in custody and/or imprisoned by the defendant's servants and/or agents in a room in the said building for more than an hour before the plaintiff was permitted to leave. By reason of the above stated matters, the plaintiff was prevented from carrying out his duties and obligations as the lawful Speaker of the assembly. Besides, he suffered shock, pain, injury, loss and damage, whereby he was deprived of his liberty as aforesaid. The plaintiff also suffered and endured mental distress, great humiliation and embarrassment in public. The plaintiff claims, inter alia, damages and an injunction to prevent the defendant and/or his agents or servants from denying the plaintiff entry to the assembly and/or prohibiting and/or obstructing the plaintiff in whatsoever way from occupying the office of and/or carrying out his duties as the lawful Speaker of the Legislative Assembly.

[9] There are four things to be said about the plaintiff's statement of claim. First is that the plaintiff maintains that he still is the Speaker of the Legislative Assembly. Second is that the plaintiff acknowledges that a sitting of the Legislative Assembly took place on 7 May 2009. Third is that it was not the defendant who assaulted the plaintiff but it was the act of the defendant's unknown servants and/or agents. Last but not the least, the reliefs he is seeking is in connection with his capacity as the Speaker of the State Assembly as can be seen in prayer (d) at para 8 of the statement of claim wherein the plaintiff, inter alia, prays for:

> An injunction to prevent the Defendant and/or his agents or servants from denying the Plaintiff entry to the Assembly or prohibiting or obstructing the Plaintiff in any way whatsoever from occupying the office of or *carrying out his duties as the lawful Speaker of the Assembly*.

[10] Now, the defendant's application in encl 11 is made under O 18 r 19 of the Rules of the High Court 1980. There are two general grounds upon which the defendant has grounded his application. In the first place, the defendant said that the plaintiff's pleading is scandalous, frivolous and vexatious. Secondly, it is otherwise an abuse of the process of the court. Affidavit evidence is admissible under O 18 r 19(1)(b) and (d) of the Rules of the High Court 1980 (the RHC 1980).

[11] The main thrust of the defendant's application is contained in paras 10, 11, 12, 13, 14 and 15 of his affidavit in encl 11A which state:

10 In fact, during the sitting in the Assembly on 7.5.2009, the Plaintiff,

who was the Speaker until 7.5.2009, was removed from his position as Speaker by way of a resolution of the Perak State Assembly. This is clear from the following:

(a) There was a motion/notice which was brought/given duly in accordance with the Standing Orders of the State Legislative Assembly of Perak for the purposes of removing the Plaintiff as Speaker after 7.5.2009;

(b) my solicitors' letter dated 12.6.2009 requesting the Secretary of the Assembly to explain the issue raised by the Plaintiff, which is enclosed herein and marked as Exhibit 'GAR1'; and

(c) Letter from the Secretary of the State Legislative Assembly dated 15.6.2009 which, inter alia, states that the Plaintiff is no longer the Speaker of the State Legislative Assembly of Perak. Further, the Secretary of the Assembly also confirms that I am the current Speaker of the State Legislative Assembly of Perak. Enclosed is a copy of the letter from the Secretary of the Assembly dated 15.6.2009, marked as Exhibit 'GAR2'.

11 I am advised by my solicitors that in reality, the Plaintiff's Statement of Claim, in pith and substance, revolves on the proceedings that occurred in the State Legislative Assembly and therefore, is subject to Article 72 of the Federal Constitution. I respect the decision and resolution passed by the State Legislative Assembly, which is set out in 'GAR2'.

12 The Plaintiff cannot use his stubbornness to refuse to abide by the resolution passed by the State Legislative Assembly on 7.5.2009 as the basis of his action which he has filed, without taking into consideration the obstacles in the laws which challenge him, namely Article 72 of the Federal Constitution.

13 Arising therefrom, the Plaintiff's position at this juncture is merely as an Assemblyman for Tronoh and he cannot use the court as a tool to hold on to his position as Speaker by obtaining an injunction in the form prayed for in paragraph 8(c) of the said Statement of Claim. I have instructed my solicitors to put forward submissions on the issue of the powers to appoint the Speaker pursuant to the laws of Perak at the hearing of my application.

14 At the same time, I note from the said Statement of Claim that the Plaintiff has not challenged the validity of the sitting of the State Legislative Assembly on 7.5.2009. Therefore, the Plaintiff's action filed herein, I am advised by my solicitors and verily believe, is a back-door attempt by the Plaintiff to use this Honourable Court to challenge Article 72 of the Federal Constitution.

15 I also refer to the said Statement of Claim and am advised by my solicitors and verily believe that the Plaintiff has admitted that he had been removed 'from carrying out his duties and obligations as the lawful Speaker of the Assembly …' His removal from office of Speaker was implemented through a resolution of the State Legislative Assembly which sat on 7.5.2009 and not by me.

[12] Regarding GR1, the following was written:

Pejabat Setiausaha Kerajaan
Perak Darul Ridzuan
Bahagian Majlis
Aras 2, Bangunan Perak Darul Ridzuan
Jalan Panglima Bukit Gantang Wahab
30000 Ipoh.

Tel: 05-2531957
Faks: 05-2410451

Ruj: PSUK Pk(MAJ)A355/525/6
Tarikh: 21 J'Akhir 1430
15 Jun 2009

Tetuan Ong-Hanim & Badrul
76B, Persiaran Greentown 1
Greentown Busines Centre
30450 Ipoh
Perak Darul Ridzuan.

Tuan,

MAHKAMAH TINGGI IPOH WRIT SAMAN NO 22-118-2009

PLAINTIF: SIVAKUMAR A/L VARATHARAJU NAIDU

DEFENDAN: GANESAN A/L RETANAM----------

1. Surat tuan bertarikh 12 Julai 2009 dirujuk.

2. Untuk makluman tuan, usul perlucutan jawatan YB Sivakumar a/l Varatharaju Naidu sebagai Speaker Dewan Negeri Perak telah dibuat melalui usul bertulis yang telah diterima oleh Pejabat Setiausaha Dewan pada 23 April 2009 ('usul tersebut').

3. Usul tersebut juga telah dibawa secara lisan dan diluluskan melalui ketetapan Dewan Negeri yang telah bersidang pada 7 Mei 2009. Oleh itu, secara rasminya saya selaku Setiausaha Dewan memaklumkan pihak tuan bahawa YB Sivakumar a/l Varatharaju Naidu bukan lagi merupakan YDP DUN Perak. Status beliau kini adalah sebagai YB Tronoh sahaja.

4. Usul Perlantikan YB Dato' Ganesan sebagai YDP baru juga telah dibuat melalui usul bertulis yang telah diterima oleh Pejabat Setiausaha Dewan pada 23 April 2009 ('usul perlantikan YDP baru').

5. Usul perlantikan YDP baru juga telah dibawa secara lisan dan diluluskan melalui ketetapan Dewan Negeri yang telah bersidang pada 7 Mei 2009. Maka dengan ini saya selaku Setiausaha Dewan memaklumkan pihak tuan bahawa status YB Ganesan a/l Retanam kini adalah merupakan YDP DUN Perak.

Sekian, harap maklum.

Yang benar,

tt

(ABDULLAH BIN ANTONG SABRI)

Setiausaha

Dewan Negeri Perak Darul Ridzuan

[13] In the plaintiff's affidavit in encl 16, the following assertions are made:

(i) 'pilihan' beliau sebagai 'Speaker' yang dikatakan adalah tidak sah dari segi undang-undang kerana pilihan tersebut dijalankan sebelum permulaan apa-apa prosiding perhimpunan Dewan Undangan Negeri ('DUN');

(ii) usul untuk mencadangkan beliau sebagai 'Speaker' telahpun terlebih dahulunya ditolak oleh saya;

(iii) beliau dari mulanya tiada apa-apa hak untuk menghadiri ke perhimpunan DUN tersebut tanpa jemputan yang wajar dan beliau adalah pada semua masa yang material adalah seorang penceroboh ('trespasser');

(iv) tiada apa-apa hal urusan DUN boleh dijalankan sehingga perhimpunan dimulakan ('open').

[14] Then, again in his affidavit (encl 14) plaintiff averred:

3. Saya merujuk kepada Perenggan 6 Afidavit Jawapan Defendan dan mengatakan bahawa pemecatan saya sebagai Yang DiPertua tidak sah atau berkuatkuasa kerana dalam persidangan DUN pada hari tersebut, saya pada awalnya dan sebelum itu membuat Peraturan (Ruling) No 2 tahun 2009 bahawa:

3.1 Hee Yit Foong (yang telah mempengerusikan persidangan DUN secara salah bagi tujuan mengusulkan resolusi untuk memecat saya dan melantik Defendan sebagai Yang DiPertua) tiada hak untuk mempengerusi persidangan tersebut selagi saya masih hadir sebagai Yang DiPertua dalamnya;

3.2 Defendan tidak pernah dilantik sebagai Yang DiPertua dan saya tidak pernah dipecat sebagai Yang DiPertua;

3.3 Defendan telah menghina Dewan yang Mulia;

3.4 Tiada dibenarkan sebarang prosiding berlainan berjalan dalam Dewan semasa saya sebagai Yang DiPertua masih berada dalam kerusi jawatan saya.

4. Oleh yang demikian, saya mengatakan bahawa saya masih Yang DiPertua yang sah disebabkan terdapat kecacatan dan ketaksahan dalam perlantikan Defendan untuk menggantikan saya pada hari tersebut.

[15] It is of significance to note that the central focus of the plaintiff's affidavits is directed to the question of the validity of the proceedings of the Legislative Assembly at its sitting on 7 May 2009.

[16] Mr Firoz Hussein, learned counsel for the defendant argued that the plaintiff's statement of claim should be struck out because it is vexatious and an abuse of process. He contended that the plaintiff's action is plainly and obviously unsustainable for the reason that the defendant's action in the Legislative Assembly, in exercising his functions and duties as Speaker, is privileged. He argued that the plaintiff is not entitled to challenge the validity of proceedings in the assembly and that the court has no jurisdiction to enquire into matters relating to the internal procedure, management and discipline of the assembly. He further added that the plaintiff has no basis to claim that the unknown persons who purportedly assaulted the plaintiff are the defendant's agents and/or servants.

[17] On the other hand, Mr Chan Kok Keong, learned counsel for the plaintiff said in his submission that in essence in the present action both the plaintiff and the defendant are claiming that they are the lawful Speaker of the Legislative Assembly. He agreed with the principle of law as stated by learned counsel for the defendant that this court has no jurisdiction to enquire into matters relating to the internal procedure, management and discipline of the assembly. Hence, he argued that this court should not decide in this case who the lawful Speaker of the Legislative Assembly is now. As a final point, learned counsel for the plaintiff emphasised that the thrust of the plaintiff's argument in respect of encl 11 is that who is the lawful Speaker has

not been finally determined by the Legislative Assembly. Therefore, he argued that encl 11 should be dismissed with costs.

[18] I have read in detail the defendant's application in encl 11, the plaintiff's pleading and the relevant affidavits filed by both sides. As noted earlier, the defendant in his affidavit has stated that at the sitting of the Legislative Assembly on 7 May 2009 the plaintiff was removed as the Speaker and then he was appointed by the Assembly as the lawful new Speaker. In this regard, it is equally important to note that at para 3 of the statement of claim the plaintiff clearly states that on 7 May 2009 he was chairing a sitting of the Legislative Assembly. It is not in dispute that the Legislative Assembly was properly convened on 7 May 2009 and that the sitting on that day was lawful. What is disputed by the plaintiff is that his removal as Speaker and the appointment of the defendant as the new Speaker were invalid.

[19] Having stated the above, in my view the pleading and the affidavits evidence point to this: For one, at one stage of the sitting of the Legislative Assembly on 7 May 2009 the plaintiff was removed from his office of Speaker by way of a resolution carried out by the Assembly. For another, at another stage of the said sitting of Legislative Assembly on that day the defendant was elected to the office of Speaker by way of a motion that was brought and passed by the assembly. In my view, the removal of the plaintiff as the Speaker and the appointment of the defendant as the new Speaker were part of the proceeding of the Legislative Assembly on 7 May 2009.

[20] This brings into focus the application of the provisions of art 72(1) of the Federal Constitution to the effect that the validity of any proceedings in the Legislative Assembly of any state shall not be questioned in any court. In the case of *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24, our Federal Court held that art 72(1) must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. In our present case, art 36A of the Laws of the Constitution of Perak Darul Ridzuan expressly provides that it is the assembly which determines the removal or election of the Speaker. Article 36A states:

(1) the Legislative Assembly shall from time to time elect —

   (a) As Speaker, such person as the Assembly may determine who is a member or qualified to be a member of the Legislative Assembly.

(2) The Speaker may at any time resign his office and shall vacate his office —

A ...

(c) If the Assembly at any time so resolves.

B **[21]** Therefore, one thing is clear. The Legislative Assembly has the power or jurisdiction to elect and/or to dismiss the Speaker. Hence, the issue of who is the validly appointed Speaker is not one which is within the court's jurisdiction.

C **[22]** As Tun Mohamed Suffian bin Hashim said in his book, *An Introduction to the Constitution of Malaysia* (2nd Ed) at p 155:

> Article 72 of the Federal Constitution provides for the privileges of Legislatives Assemblies. It says that the validity of any proceedings may not be questioned in any court …

D

[23] It is well settled that the validity of any proceeding in the Legislative Assembly is not justiciable. The court has no jurisdiction to adjudicate upon the matter (see *Lim Cho Hock v Speaker, Perak State Legislative Assembly* E [1979] 2 MLJ 85; *Tun Datu Haji Mustapha Bin Datu Harun v Legislative Assembly of State of Sabah & Ors* [1986] 2 MLJ 388; *Fan Yew Teng v Government of Malaysia* [1976] 2 MLJ 262; and *Bradlaugh v Gossett* (1884) 12 QBD 271).

F **[24]** Applying the foregoing principles to the present case, this court cannot interfere with what has been decided by the Legislative Assembly on 7 May 2009, which includes the resolution by the assembly to remove the plaintiff as Speaker and to elect the defendant as the new Speaker. Article 72(1) of the Federal Constitution prevents this court from examining the G matters that took in the course of the proceedings of the Legislative Assembly on 7 May 2009 given that the Legislative Assembly has the power or jurisdiction to elect and/or to dismiss the Speaker. Whatever matter concerning the removal and the appointment of the Speaker ought to be examined, discussed and resolved in the Legislative Assembly. The Legislative H Assembly has exclusive jurisdiction over the matter and it has the absolute right to control its own proceedings. Indeed, the decision of the Legislative Assembly on 7 May 2009 to remove the plaintiff as the Speaker and to appoint the defendant as the new Speaker is conclusive. The matter has been determined by the Legislative Assembly on 7 May 2009. To question the I validity of the removal of the plaintiff as the Speaker and the appointment of the defendant as the Speaker is to question the validity of the proceeding of the assembly. This cannot be done by virtue of art 72(1) of the Federal Constitution. That is why I am unable to agree with the submission of learned counsel for the plaintiff that the proceeding on 7 May 2009 has not

been finally determined as to whom the lawful Speaker of the Legislative Assembly is. With respect, to agree to the stand taken by learned counsel for the plaintiff would go against the privilege and immunity principle of the Legislative Assembly which has been constitutionally entrenched in art 72 of the Federal Constitution.

[25] To my mind, the resolutions to dismiss the plaintiff as Speaker and to appoint the defendant as the new Speaker have determined who the valid Speaker is and it is conclusive in the sense that this is what the Legislative Assembly decided on that day.

[26] With that, the crucial question arises. What therefore is the effect? It is this. The plaintiff's capacity as the Speaker of the Legislative Assembly no longer exists at the time of the filing of the present action. The non-justiciability of the validity of the proceeding of the Legislative Assembly on 7 May 2009 proved fatal to the ability of the plaintiff to assert in his pleading that he is still the current lawful Speaker of the Legislative Assembly. In the circumstances, I think I can fairly conclude that the plaintiff's action which is premised on the assertion that he is still the lawful Speaker of the Legislative Assembly is untenable. Hence, the plaintiff's prayer for injunctions is therefore plainly and obviously unsustainable.

[27] Moreover, as I have stated earlier, the resolution to appoint the defendant as the new Speaker has determined who the valid Speaker is and it is conclusive in the sense that this was what the Legislative Assembly decided on 7 May 2009. As can be seen in the plaintiff's statement of claim, his action herein is based wholly on matters which took place during the proceedings of the Legislative Assembly on 7 May 2009. In this regard, the defendant's action in the Legislative Assembly, as the lawful Speaker, in exercising his functions and duties was a matter concerning the assembly's internal proceedings which cannot be interfered with by the court. The control of the Legislative Assembly over its internal proceedings is absolute. This is one of the fundamental features of the sovereignty of the Legislative Assembly. In *Bradlaugh v Gosset*, the plaintiff had commenced an action against the sergeant-at-arms of the House of Commons and sought an injunction to restrain him from carrying out a resolution of the House to exclude the plaintiff from the House. The English court held that it being a matter relating to the internal management of the procedure of the House of Commons, the matter was not justiciable before it. Lord Coleridge CJ stated at p 275:

> What is said or done within the walls of Parliament cannot be inquired into in a court of law. …. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive.

[28] The following passage of the judgment of Stephen J at p 278 is of relevance:

> I think that the House of Commons is not subject to the control of Her Majesty's courts in its administration of that part of the statute law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such resolution as the one before us is justifiable.

[29] And further down at p 280, Stephen J explained the law as follows:

> Whatever may be the reasons of the House of Commons for their conduct, it would be impossible for us to do justice without hearing and considering those reasons; but it would be equally impossible for the House, with any regard for its own dignity and independence, to suffer its reasons to be laid before us for that purpose, or to accept our interpretation of the law in preference to its own. It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even it that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly.

[30] On the question of the issue of assault as pleaded by the plaintiff in his statement of claim, the point to make here is that the plaintiff has not pleaded that it was the defendant had who had assaulted him. It must be emphasised again here that the plaintiff has pleaded in para 3 of his statement of claim that it was the defendant's agents and/or servants who assaulted him. This is contrary to what was submitted by learned counsel for the plaintiff in his written submission to the effect that the defendant had also assaulted the plaintiff. I should perhaps also make a note that the plaintiff himself in his affidavit in encl 16 at para 6 changes his case to also allege that the defendant assaulted him. In this regard, it is a cardinal principle of pleadings that the parties to an action are bound by their own pleadings. The courts are also bound by the pleadings in as much as the parties themselves. The most important purpose of pleadings is to plead reasonable cause of action, define the issues of facts and questions of law to be determined by the courts. The courts are not unconstrained to decide on an action on which no issue has been raised by the parties in their respective pleadings (see *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] 1 LNS 42; *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152; [1990] 1 CLJ 1113; and *Metroplex Development Sdn Bhd v Metroplex Development Sdn Bhd v Mohd Mastana bin Makaddas & Anor* [1995] 2 MLJ 276; [1995] 3 CLJ 70). It is also an established principle that an omission or defect in a statement of claim cannot be made good by affidavit evidence. This principle was shown in a number of cases. I would only draw attention to only one case. In the Federal Court case of *United Malayan Banking Corp Bhd v Palm & Vegetable Oils Sdn Bhd & Ors* [1983] 1 MLJ 206, Raja Azlan Shah Ag LP (as His Highness then was) in

considering an appeal arising from an application for summary judgment under O 14 of the RHC 1980 said at p 207: A

> we cannot but observe that any defect or omission in the statement of claim cannot be made good by affidavit evidence *Gold Ores Reduction Co v Parr* where Mathew J, said that 'it is most important that a defendant should know from the writ what the claim against him is'. B

[31] The argument by learned counsel for the plaintiff and the plaintiff's affidavit establish facts different from those pleaded by the plaintiff in his statement of claim which constitute a drastic departure from the case as pleaded. For this reason, as the pleading now stands, the plaintiff is estopped in this proceeding from asserting that he was also assaulted by the defendant. C

[32] What is more, the plaintiff has not pleaded any material facts to support the contention that the persons who assaulted him are indeed the defendant's agents and/or servants. In actual fact, as can be seen in para 4 in his affidavit in reply in encl 16 the plaintiff himself has admitted that he does not even know the person who removed him from the Speaker's chair. On this issue, the defendant has firmly stated in his affidavit in encl 11A to the effect that he does not have any servants and/or agents in the Legislative Assembly on 7 May 2009. There is no nexus pleaded by the plaintiff in his statement of claim to link the alleged agents and/or servants, who the plaintiff has utterly failed to identify, to the defendant. In this context, I think there is merit in the argument of learned counsel for the defendant that the plaintiff has not pleaded any material fact to show how the unknown person who assaulted him could be the defendant's agents and/or servants. Against such a contention by learned counsel for the defendant, I note that learned counsel for the plaintiff did not respond to this argument. In my view, the plaintiff's statement of claim as it now stands does not include material facts essential to establish a legal right enforceable against the defendant regarding his averment that it was the defendant's agent and/or servants who assaulted him. Order 18 r 7 of the RHC 1980 states, inter alia, that every pleading must contain, and contain only, a statement in a summary form of the *material* facts on which the party pleading relies for his claim or defence, as the case may be. In *Bruce v Odhams Press, Ltd* [1936] 1 KB 697 at p 712, Scott LJ said: D E F G H

> The word 'material' means necessary for the purpose of formulating a complete cause of action, and if any one 'material' fact is omitted, the statement of claim is bad. I

[33] In my view, the plaintiff's statement of claim in its present form is in every respect insufficient on particulars for a claim of assault by the unknown agents and/or servants. Given that the plaintiff does not even know who the

persons are, he has no valid basis to link the unknown persons to the defendant and to claim that those persons are the defendant's agents and/or servants. In this way, in my considered view, it is an action with no prospect of success. Having regard to the circumstances of the present case, I do not think it is right to let it go to trial in view of the fact that since I have no reason to believe that the plaintiff, going by his own pleading, will be able to do so in a trial of the action. Hence, the claims for damages prayed for by the plaintiff are totally unfounded and obviously unsustainable. It is a frivolous and vexatious claim.

[34] It is true that the power to dismiss an action summarily under O 18 r 19 of the RHC 1980 is a drastic one. Undeniably, it should be exercised with great caution but in proper case unhesitatingly. In a plain and obvious case when it is conspicuously clear that the claim on the face of it is obviously unsustainable, the court will no doubt but to exercise its discretion in striking out an action (see *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36). Having considered the plaintiff's pleading, the affidavits and the arguments of both sides and having given the matter the most careful consideration, in my view the present case comes within the category of plain and obvious case as envisaged in the case of *Bandar Builders Sdn Bhd* for the reason that the claim is frivolous and vexatious and an abuse of the process of that court. The action has no prospect to succeed. That being the case, I see no reason to disallow the defendant's application in encl 11.

[35] In the result, I make the order in term of encl 11 paras 1 and 3. Accordingly, since the statement of claim has been struck out, the plaintiff's application for interlocutory injunction in encl 3 is too struck out with costs as a right to obtain such an injunction is not a cause of action; it cannot stand on its own (see *Siskina (Owners of Cargo Lately Laden on Board) & Ors, The v Distos Companies Naviera SA* [1979] AC 210).

Plaintiff's application dismissed and the defendant's application allowed with costs.

Reported by Kanesh Sundrum